

NO. 44120-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

LANCE BURTON,

Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE (Ret.) ROBERT L. HARRIS
and MARY JO HARRIS, et. al.,

Respondents.

MOTION ON THE MERITS

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I. IDENTITY OF MOVING PARTY

Respondent Honorable Superior Court Judge Robert L. Harris, et al. al., by and through its attorney-of-record, Christopher Horne, Deputy Prosecuting Attorney, asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Respondents respectfully request this Court dismiss Appellant's appeal and determine that the prior determination of the Supreme Court refusing review is a final determination on the merits and that attempts to resuscitate Appellant's cause of action are improper and, therefore, denied.

III. FACTS RELEVANT TO THE MOTION

Appellant's litigation first commenced with a suit against his lawyer that was dismissed by the Honorable Robert Harris, due to statute of limitations' issues.¹ Thereafter, Appellant commenced litigation against Judge Harris, his marital community, and the Clark County Board of Commissioners, in its official capacity for the Board's failure to supervise the Superior Court. Appellant's unsuccessful efforts to sue Judge Harris continued from the trial court to the Court of Appeals and review was denied by the Supreme Court at 173 Wn.2d 1023 (2012).

¹ The statement of Facts is more completely contained in the appellate decision that preceded this motion under cause number 41521-6-II at 164 Wn. App. 1002 (2011) attached as *Appendix I*.

Following issuance of the Supreme Court's denial of review and a mandate from Division II, Appellant sought to recommence its case by way of an extraordinary motion under CR 59 and 60.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Appellant has pursued his claims, first, against his attorney and then against the judge who ruled against him. Those claims have been pursued in the trial court and the appellate courts, leading up to the issuance of a mandate in Cause No. 41521-6-II. *See Appendix 2.*

After the issuance of the mandate, Appellant filed extraordinary motions to avoid the claim preclusive effect of the mandate. Specifically, Appellant alleged error under CR 60(b). A copy of Appellant's motion and affidavit to vacate decision/judgment is hereby attached as *Appendix 3.*

Clark County Respondents opposed Burton's motion for failure to satisfy the prerequisites for extraordinary review under CR 60 by memorandum attached as *Appendix 4.* Following oral argument, the trial court denied Burton's motion, finding it meritless and imposed sanctions based on the frivolous nature of the motion.

////////

Failure to Satisfy the Prerequisites of CR 60(b).

CR 60(b) authorizes relief from judgment or order for:

Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.

As the moving party, Appellant bears the burden of proving a mistake² of such significance that the trial court, in possession of that fact, would have been compelled to take a different action.

Appellant's alleged mistake is contained on page 2 of its affidavit in support of its CR 60(b) motion based on its claim that Skamania County officials were coerced or otherwise obligated to transfer the civil action to Cowlitz County. As noted above, this allegation is wholly unsupported by any credible evidence and, therefore, the trial court did not abuse its discretion in denying the motion. In Eagle Pacific Insurance Co. v. Christensen Motor Yacht Corp., 85 Wn. App. 695, 934 P.2d 715 (1997), the court held that:

This court reviewed a trial court's disposition of a CR 60(b) motion for abuse of discretion [*authorities omitted*]. An abuse of discretion "only where it can be said no reasonable [*person*] would take the view adopted by the trial court."

Id. at 708-709.

² Topliff v. Chicago Insurance Co., 130 Wn. App. 301, 308, 122 P.3d 922 (2005).

Appellant's second stated reason for CR 60 relief was a reply to his public records request that no records existed. Such a reply was appropriately rejected by the trial court for two reasons. First, the absence of the record does not, in any conclusive manner, support Burton's claim. Second, this evidence was discoverable with reasonable diligence and, therefore, is not an appropriate basis for relief under CR 60(b).

CR 60(b) authorizes a court to vacate judgment on the basis of **newly discovered evidence** which, by due diligence, could not have been discovered in time to move for a trial under CR 59(b). A court will not grant vacation under this rule unless the newly discovered evidence is material. Vance v. Offices of Thurston County Commissioners, 117 Wn. App. 660, 671, 71 P.3d 680 (2003). Moreover, a court must reject a motion unless the moving party can demonstrate the inability to timely discover the evidence through the exercise of due diligence. Id.

Standards for a Motion on the Merits

Respondents have satisfied the requirements of RAP 18.14.

The court may grant a motion on the merits to affirm, in whole or in part:

If the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the judge or commissioner will consider all relevant facts, including whether they issues on review (a) are clearly controlled by

settled law, are factual and supported by the evidence, or are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.³

The motion on the merits is warranted and even required for numerous reasons in this particular case. First, Appellant has failed to provide this Court with an adequate record for reviewing the issues. As the Appellant, Burton has the burden of perfecting the record on appeal so that the Court has before it the information and evidence relevant to the issues he raises. *RAP 9.2(b)*. Bulzomi v. Dept. of Labor & Industries, 72 Wn. App. 522, 525, 864 P.2d 996 (1994). Failure to provide an adequate record precludes review of the alleged errors. Here, Appellant filed a portion of the record relevant to its motion and excluded documents filed by Clark County or any of the documents from the underlying action.

In addition, Appellant has made unfounded claims against Clark County alleging, either as fact or argument, that Clark County officials coerced others or acted improperly. In Allen v. Asbestos Corp., 138 Wn. App. 564, 569-579, 157 P.3d 406 (2007), the court approved a trial court's rejection of unsupported facts. *See also, by analogy, CR 56(e)*.

³ Wash. RAP 18.14(e) (1).

Appellant's allegations in its motion for order to vacate against Clark County and the Honorable Stephen Warning are wholly unfounded and must be rejected and stricken from the record. There simply are facts in the record sufficient to support a CR 60(b) motion or survive a Motion on the Merits.

Respondents contend that subsection (c) also supports a Motion on the Merits. The grant or denial of relief under CR 60(b) is vested in the discretion of the trial court. Judge Warning properly exercised that discretion in rejecting Burton's motion for lack of newly-discovered evidence and for restating arguments that have already been argued and rejected. These are matters of judicial discretion and the decision was within the discretion of the trial court. Therefore, a Motion on the Merits is appropriate in this case.

V. CONCLUSION.

Washington courts have provided every opportunity for Lance Burton to air his grievances. No party is guaranteed a victory. The continued appeals and motions for reconsideration/vacation must end. Our courts place great weight in the finality of judgments. In this case, a Mandate was issued in 2012, yet Burton continues to reargue its case. While the stated basis for this appeal is CR 60, a review of Burton's brief

shows that Plaintiff is trying to again reargue the merits of his rejected claims. Clark County Defendants request this court grant this Motion on the Merits and dismiss Burton's appeal.

Respectfully submitted this 14th day of June, 2013.

RESPECTFULLY SUBMITTED:

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APPENDIX 1

No. 41521-6-II

Burton in a land use action against Clark County. On June 1, 2004, the Honorable Robert L. Harris dismissed the malpractice suit after determining that the statute of limitations had expired. On June 22, Judge Harris denied Burton's June 10 pro se motion for reconsideration. Burton appealed. On August 18, 2005, our court commissioner affirmed Judge Harris's dismissal. The direct appeal mandated on September 14, 2006.

While Burton's appeal was pending and after the mandate, Burton filed several additional motions to vacate. It is unclear from this record whether Judge Harris ruled on all of these motions. But on January 3, 2007, Judge Harris sent a letter to Burton that stated:

I have received copies of your several motions that you have filed over the past couples [sic] of months, including your most recent request for an ex parte meeting. I cannot meet with you without the other side present. In any event, your appeal has been denied and any further appeal time has lapsed. A final order dismissing your litigation has been entered, and there is at this time no way to restore your litigation status.

Clerk's Papers at 157.

II. CIVIL SUIT AGAINST JUDGE HARRIS AND BOARD OF COMMISSIONERS

In March 2009, Burton¹ sued Judge Harris, the judge's spouse and marital community, and the Board of Clark County Commissioners, alleging several causes of action based on Judge Harris's actions in the malpractice suit.² Burton originally filed this action in the Clark County

¹ Burton represented himself in this action.

² These causes of action included (1) several 42 USC § 1983 claims, (2) fraud, (3) federal mail fraud, (4) negligent misrepresentation, (5) negligence, and (6) intentional infliction of emotional distress.

Superior Court, but he then moved for a change of venue.³ The Clark County Superior Court transferred the case to the Skamania County Superior Court. After the assigned Skamania County judge recused from this matter,⁴ the Skamania County Superior Court transferred the matter to the Cowlitz County Superior Court, and the case was assigned to Judge Stephen Warning.

Burton objected to the change of venue to Cowlitz County. On January 28, 2010, Judge Warning denied the objection. On March 15, Burton filed an affidavit of prejudice against Judge Warning. Judge Warning refused to recuse himself, ruling that the affidavit of prejudice was untimely because he had already ruled on the objection to the venue transfer. Judge Warning then granted the respondents' summary judgment motion and dismissed all of Burton's claims with prejudice. On May 28, 2010, Judge Warning denied Burton's motion for reconsideration.

³ Burton alleges that "the order became meritless [sic] in Clark County," and asserts that he re-filed the complaint in Skamania County. Br. of Appellant at 2. But there is nothing in the record showing that Burton re-filed this case in Skamania County. In contrast, the clerk's papers contain copies of the Clark County Superior Court docket indicating that venue was changed to Skamania County. The docket also notes that Burton was to pay the fees related to the venue transfer.

⁴ In his opening brief, Burton alleges that Skamania County Superior Court Judge E. Thompson Reynolds was recused on the matter and that the Skamania County court administrator tried to appoint Klickitat County Judge Brian Altman, but Judge Altman was also recused. Burton further alleges that he requested that Retired Judge Thomas Lodge be assigned the case and that he unsuccessfully attempted to obtain contact information for Judge Lodge from "Ms. Suzy Cheffler of the Court Administration office in Olympia," and a court administrator. Br. of Appellant at 3. He also alleges that the Skamania court administrator and the respondents "colluded against" his "objections" in moving the case to Cowlitz County and that the respondents tried to "command[]" Skamania to transfer the case to Pierce County, but the clerk refused to do so. Br. of Appellant at 3. But there is nothing in the record to support any of these factual assertions.

Burton petitioned for direct appeal with the Washington State Supreme Court. The court denied direct review and transferred the appeal to us.

ANALYSIS

Burton argues that it was error to transfer this action to Skamania County Superior Court after he had specifically requested that Retired Judge Thomas Lodge hear the case.⁵ Burton asserts that he was entitled to have Judge Lodge hear the case (and that Judge Lodge had a personal right to hear the case), apparently as a pro tem judge, because the judge had made prior discretionary rulings.⁶ He also appears to challenge Judge Warning's refusal to recuse himself based on Burton's March 15, 2010 affidavit of prejudice.⁷ Additionally, Burton argues that the various court administrators and judges erred when they (1) refused to help him locate Judge Lodge, (2) charged him fees for the venue transfer, (3) failed to transfer all of the required filings to the new venue, and (4) failed to transfer the case to Pierce County.⁸

As the appellant, Burton has the burden of perfecting the record on appeal so that we have before us the information and evidence relevant to the issues he raises. RAP 9.2(b);

⁵ It appears that Judge Lodge was a superior court judge in Clark County. *See Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998), *review denied*, 137 Wn.2d 1015 (1999).

⁶ We note that although Burton appears to allege that Judge Lodge entered rulings in a land use case in which Erikson had represented Burton, Burton does not suggest that Judge Lodge made any rulings in Burton's civil action against Judge Harris.

⁷ We note that although Burton has attached a copy of the affidavit of prejudice to his brief, that filing is not part of the official appellate record. Furthermore, even if we were to consider this document, Burton does not dispute that Judge Warning had already made discretionary rulings in this case and, therefore, fails to show that Judge Warning erred when he denied the motion. RCW 4.12.050(1).

⁸ This last argument makes little sense and it is not clear from the record or the briefing exactly what Burton is talking about in regard to an attempted transfer of venue to Pierce County.

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Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994) (citing *State v. Vazquez*, 66 Wn. App. 573, 583, 832 P.2d 883 (1992)). Failure to provide an adequate record “precludes review of the alleged errors.” *Bulzomi*, 72 Wn. App. at 525 (citing *Allemeier v. Univ. of Washington*, 42 Wn. App. 465, 472-73, 823 P.2d 306 (1985), *review denied*, 105 Wn.2d 1014 (1986)). Here, the record on appeal contains no information or evidence related to any of the above arguments. Accordingly, we decline to address these issues further.

Burton also contends in his issue statements that Judge Warning erred when he ruled that the summary judgment order was improper because “material evidence did not support doing so.” Br. of Appellant at 7. Burton does not, however, present any argument supporting this issue, and he clarifies in his reply brief that he is challenging only Judge Warning’s authority to consider this matter.⁹ Even though the respondents have addressed potential substantive issues related to the summary judgment ruling, Burton’s opening brief and reply brief establish that he never intended to raise such issues before this court.¹⁰ Accordingly, we do not address any issues related to the summary judgment order itself.

⁹ After acknowledging that he could have argued raised challenges related to “[t]he case against Judge Harris,” or (2) “the legal [a]uthority and [j]urisdiction of Superior Court Judge, Mr. Stephen Warning of Cowlitz County,” Burton states he has always intended the court to examine, “the latter, i.e. the unlawful actions of Clark, Skamania and in particular Cowlitz County and its Judge, Stephen Warning.” Reply Br. at 2.

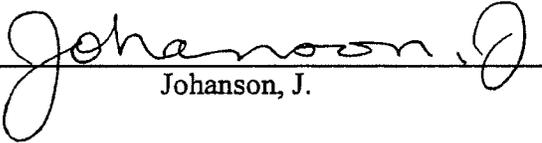
¹⁰ Burton’s “Statement of Grounds for Direct Review,” which he filed with our Supreme Court on July 15, 2010, also supports this conclusion.

No. 41521-6-II

Burton requests attorney fees and expenses under RAP 18.1(a); RCW 4.84.010; RCW 4.84.030, RCW 4.84.170, and RCW 4.84.190. Because Burton is not the prevailing party, we deny his request for attorney fees and expenses.¹¹

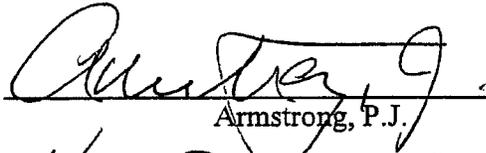
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Johanson, J.

We concur:



Armstrong, P.J.



Van Deren, J.

¹¹ Respondents do not request attorney fees and costs.

APPENDIX 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LANCE W. BURTON,
Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE
ROBERT L. HARRIS and MARY JO
HARRIS, husband and wife, and their marital
community; BOARD OF CLARK COUNTY
COMMISSIONERS (BETTY SUE MORRIS,
MARC BOLDT and STEVE STUART), for
and on behalf of CLARK COUNTY,
Respondenta.

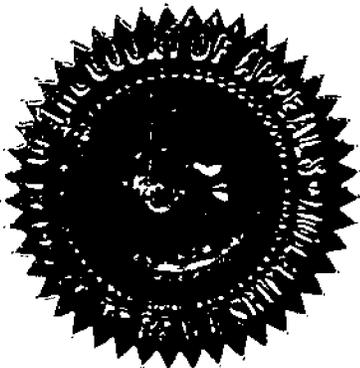
No. 41521-6-II

MANDATE

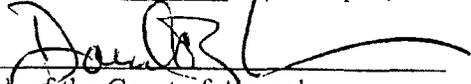
Cowlitz County Cause No.
10-2-00211-2

The State of Washington to: The Superior Court of the State of Washington
in and for Cowlitz County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on September 20, 2011 became the decision terminating review of this court of the above entitled case on March 7, 2012. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 10th day of April, 2012.


Clerk of the Court of Appeals,
State of Washington, Div. II

CASE #: 41521-6-II, Mandate Pg 2

Lance W. Burton, Appellant VS Honorable Superior Court Judge Robert L Harris et al

Lance W Burton
13819 SE 19TH St
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Christopher Horne
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PO Box 5000
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Hon. Stephen Warning
Cowlitz Co Superior Court Judge
312 SW First Ave
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APPENDIX 3

RECEIVED

AUG 30 2012

Prosecuting Attorney
Civil Division

HON. JUDGE STEPHEN WARNING

**COWLITZ COUNTY SUPERIOR COURT
OF THE STATE OF WASHINGTON**

Mr. Lance W. Burton, a single man, and a)
resident of Clark County, WA,)
Plaintiff,)

v.)

Honorable Superior Court Judge Robert L.)
Harris and Mary Jo Harris, husband and)
wife and their marital community.)

Defendant's)

and)

The Board of Commissioners for Clark)
County (Betty Sue Morris, Mark Boldt and)
Steve Stuart) for and on behalf of Clark)
County.)

Defendant's)

Case No.: 10-2-00211-2

No. 41521-6-II

(Proposed)

MOTION FOR ORDER

- TO VACATE -

DECISION / JUDGMENT

PURSUANT TO CIVIL RULE 60(b) AND
RCW 4.72.010(3)(4); RCW 4.76.070/080;
RCW 4.80.010 AND CERTAIN ARTICLES
OF THE WASHINGTON STATE
CONSTITUTION

RELIEF REQUESTED

LANCE W. BURTON respectfully moves for the Court to vacate the following Order(s): Order to
Change Venue of January 28, 2010; Dismissal of Petition and the Reversal of Order for
Summary Judgement of May 26, 2010.

1
2 **STATEMENT OF THE CASE AND GROUNDS:** In short, the defendant's used their influence to
3 manipulate plaintiff's Petition of Grievance (complaint) from the legal control of Skamania
4 County by inducing Judge Stephen Warning of Cowlitz County into an unauthorized,
5 unjurisdictional position to claim and then dismiss plaintiff's complaint, without a jury trial.

6
7 On September 20, 2011 the Court of Appeals of the State of Washington, Division II filed their
8 opinion on the above case. On March 7, 2012 that decision terminated review of that case with
9 the issuance of a mandate to the Superior Court from which the appeal was taken for further
10 proceedings.

11
12 Pursuant to Civil Rule 60(b)(1)(3)(4)(5)(11) and (c) and above, this filing is made.

13
14 1. In brevity, the court may relieve a party from a final judgment, order, or proceeding
15 for the following reasons, mistakes; inadvertence; excusable neglect; newly discovered
16 evidence; fraud; etc.

17
18 2. Plaintiff will show that Mistakes and Irregularities in obtaining a judgment or order
19 was directed by the defendant, and former Superior Court Judge (Ret.) Robt. Harris, his legal
20 counselors, Mr. Frank Vellajacic and co-lead counselor Mr. Christopher Horne at the direction of
21 their supervisor the Clark County Prosecutor, Mr. Arthur Curtis. Such efforts also involved the
22 Skamania County Clerk, its Court Administrator and Cowlitz County Superior Court Judge
23 Stephen Warning.

24
25 3. Plaintiff asserts that new evidence which was not available at the time of judgment
has come to fruition, which energizes this proceeding..

1 4. Plaintiff will also show that the judgment entered is void.

2
3 5. Relief from judgment may also be entered upon by the court for any other reason
4 justifying relief from judgment under (c) "Other Remedies".

5
6 The attached Sworn and Notarized Affidavit is also attached to support this motion.

7
8 According to Civil Rule 60(e)(2) with "the filing of plaintiff's motion and affidavit, the court shall
9 enter an order fixing the time and place of the hearing thereof and directing all parties to the
10 action or proceeding who may be affected thereby to appear and show cause why the relief
11 asked for should not be granted".

12
13 This motion and affidavit is respectively presented under the provisions of Civil Rule 60(e)(1),
14 (3)(4)(5)(11)(c)(e)(1)(2)(3)(4) and RCW 4.72.010(3)(4); RCW 4.76.070/080 and RCW 4.80.010.

15
16 The plaintiff Prays for its relief and approval as submitted this 23 day of August, 2012.

17
18  A handwritten signature in black ink, appearing to read "Lance Burton", is written over a horizontal dashed line.

19 Lance Burton, Pro se
20 13819 SE 19th Street,
21 Vancouver, WA 98683
22 360-513-0251

FILED

APR 10 2012

Prosecuting Attorney
Civil Division

HON. JUDGE STEPHEN WARNING

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ COUNTY

15	Mr. Lance W. Burton, a single man, and a)	Case No. 10-2-00211
17	resident of Clark County, WA,)	AFFIDAVIT TO A CR 60(b) MOTION
19	Plaintiff,)	
21	v.)	
23	Honorable Superior Court Judge Robert L.)	
25	Harris and Mary Jo Harris, husband and)	
27	wife and their marital community.)	
29	Defendant's)	
31	And)	
33	The Board of Commissioners for Clark)	
35	County (Betty Sue Morris, Mark Boldt and)	
37	Steve Stuart) for and on behalf of Clark)	
39	County.)	
41	Defendant's)	

I Lance Burton, Plaintiff, do hereby declare under the laws of perjury for the State of Washington that the statements and exhibits mentioned or brought forth herein are true to the best of his knowledge.

I. STATEMENT OF THE CASE AND GROUNDS TO VACATE THE ORDER

1 Plaintiff Lance W. Burton filed a civil cause of action against Judge (ret.) Robert Harris et al, in Clark
3 County and then with approval and payment of his fees moved his action to Skamania County.

5
7 Soon thereafter, Skamania County's sole Superior Court Judge, E. Thompson Reynolds on October 1,
9 2009 would recuse himself.

11
13 Under the auspices of the State of Washington, therein lies **Superior Court Administrative Rule 6**,
15 which allows each county the authority to appoint a number of Pro Tempore judges to serve each county
17 when a judge recuses himself or is otherwise unavailable.

19
21 Skamania County as required for 2009 had appointed three judges, one of which was Judge Brian
23 Altman. Altman was requested to hear the Burton case upon Judge Reynolds recusal. Judge Altman
25 however chose to recuse himself too, leaving the two other Judges, Robert Weisfield, and Ron Reynier
27 available, neither would be called upon however. (Exhibit 1)

29
31
33 MISTAKE:

35
37 Plaintiff contends that Skamania County government officials were either cohearsed or otherwise
39 obligated to the pressure, influence, suggestion and motivation by the defendant's and counsel to transfer
41 this civil action to Cowlitz County and to its superior court Judge Stephen Warning. Upon such transfer,
43 Judge Warning would sign an order on January 28, 2010 without a hearing, that took command of the
45 case, (over plaintiff's stated objections Exhibits 2,3) and in doing so, violated articles of law within the
47 Washington State Constitution.

49
51 The information of this affidavit is either based upon a variety of laws of the State of Washington, or
53 comes from courthouse records or other governmental agencies.

1 APPOINTMENT OF JUDGES UNDER THE WASHINGTON STATE CONSTITUTION are as follows...

3
5 1. Article Four, Section Two (a), allows and upon the Supreme Court's awareness
7 that a "prompt and orderly administration of justice is not being carried out in any county of
9 this state, a majority of the Supreme Court is empowered to authorize a judge or retired
11 judges of courts of record of this state, to perform temporary, judicial duties in any superior
13 court of this state."

15
17 2. Article Four, Section 5, in each organized county of this state one or more
19 superior court judges may preside. Under this classification, *the governor shall direct a*
21 *superior court judge to hold court in any county other than that for which he has been*
23 *elected.*

25
27 3. Article Four, Section Seven, if neither the appointment of a superior court judge
29 is made by a majority of Supreme Court Judges, or by the governor, Art. 4 Sect. 7 allows
31 the appointment of any superior court judge to hold a superior court in any county at the
33 request of the judge of the superior court thereof, and upon the request of the governor it
35 shall be his or her duty to do so.

37
39 4. Article Four, Section Seven a case in the superior court may be tried by a judge
41 *pro tempore either with the written agreement of the parties if the judge pro tempore is a*
43 *member of the bar, and is approved by the court and sworn to try the case.*

45
47 5. Article Four, Section Seven also describes the lawful right to a previously
49 elected judge of the superior court who retires leaving a pending case in which the judge
51 has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro
53 tempore without any written agreement.

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PRESIDING JUDGE-DUTIES

Even though Skamania County's sole superior court judge had recused himself, he was still the Presiding Judge under General Rule (GR) 29(b) and obligated to the responsibility for leading the management and administration of the Burton/Harris case.

GR 29(f) also obligated Reynolds to delegate the performance of ministerial duties to court employees.

GR 29(f)(1) obligated him to supervise the judicial business of the district ... while ensuring the expeditious and efficient processing of cases; (2) pursuant to statute or rule; (5) and to supervise the daily operation of the court.

Presiding Judge Reynolds management and administration tasks were also supported by his court administrator, Ms. Elizabeth Hermansen and the lawful duties of the Skamania County Clerk, Ms. Sharon Vance.

The Washington Revised Code, (RCW) 2.32.050 of which Reynolds and all members of the judiciary are to support and uphold, requires each clerk the power to take and certify the proof and acknowledgment of any... **written** document, and under (4) to **file all** papers delivered to him/her for that purpose in **any** action or proceeding... (6) To keep a journal of the proceedings of the court and, under the direction of the court, to enter its orders, judgments and decrees. (7) to authenticate ... records, files or proceedings of the court ... any other paper.

II. BASIS FOR THE VACATION OF SUMMARY JUDGMENT

On January 28, 2010, the trial court/Judge Stephen Warning of Cowlitz County signed an order to take possession of the former Skamania County civil case # 09-2-00161-0 and did so without a hearing.

1 On May 26, 2010 the trial court of Cowlitz County then signed an order dismissing such case, known as
3 10-2-00211-2.

5
7 On the 19th day of May 2010, under Civil Rule 59 the plaintiff submitted a motion and other documents for
9 reconsideration which argued Irregularity in the Proceedings, Misconduct, Lack of Evidence and Error.

11
13 On May 28, 2010 an order signed by Judge Stephen Warning denied such motion and the plaintiff
15 appealed.

17 On March 7, 2012 such appeal was denied, 173 Wn.2d 1023.

19
21 Pursuant to CR 60(b) the plaintiff now brings forth this motion within one-year and requests relief of
23 judgment by vacation and requests this case be returned to Skamania County based upon Mistakes and
25 Newly Discovered Evidence, and for "other reasons, or remedies" justifying relief.

27
29 As is well documented in plaintiff's previous motion/brief for reconsideration he argued for numerous
31 reasons why Judge Warning should not hold the control over this case, but newly discovered evidence
33 now substantiates such claims.

35
37 **III. NEW EVIDENCE:**

39
41 **(A) LETTER**

43 On January 11, 2012 and as a result of plaintiff's public records request on January 4, 2012 to the
45 Prosecuting Attorney, Mr. Adam N. Kick of Skamania County, sent the plaintiff a letter of response
47 (Exhibit 4).

49 In Mr. Kick's letter he declares that the Skamania County Court Clerk, Ms. Sharon Vance had informed
51 Mr. Kick that she, (vance) had no documents that are not part of the official court file.
53
55

1 In that same letter, Ms. Elizabeth Hermansen who is the Court Administrator and whose role of
3 employment falls under GR 29(5)(c) is required to "report directly to the Presiding Judge E. Thompson
5 Reynolds.

7
9 Mr. Kicks letter declares that Ms. Hermansen had no written or email correspondence concerning
11 instructions, advice, or opinions by Judge Reynolds or his law clerk that were sent to Judge Warning of
13 Cowlitz County.

15 Based upon the merits of these admissions and acknowledgments, Judge Stephen Warning had
17 therefore NOT BEEN REQUESTED by Judge E. Thompson Reynolds of Skamania County, thus lacked
19 power under Article 4, Section 7 of the Washington Constitution. And in Penn v. Com. 528 S.E. 2d. 179,
21 32 Va.App.422 (2000) that court stated that "Jurisdiction means the power of a court to hear and
23 determine a cause, which power is conferred by a constitution, or a statute, or both". Furthermore, the
25 court in Clark v. State. 717 N.E. 2d 18, transferred denied 741 N.E.2d 1247(2000) also stated that a
27 "judgment made when the court lacks subject matter jurisdiction is void." And a ruling made in absence of
subject matter jurisdiction is a nullity." State v. Dvorak, 574 N.W. 2d 492, 254 Neb. 87 (1998).

29 Therefore, Judge Warning's decisions/rulings were improper and unlawfully acquired; lack lawful
31 substance of standing, and are to be deemed null and void!

33
35
37
39 (B) COUNTY CLERK DUTIES:

41 Inasmuch as the lawful duties of the Skamania County Clerk, under RCW 2.32.050 were as previously
43 stated, the defense will not be able to prove that certain files were recorded, (See Index, Exhibit 5)
45 including, a written instrument by the governor that authorized Judge Warning to hold a session of court.

47
49 Also absent in the clerk's records is the lack of a majority of Supreme Court Justice's granting authority
51 and jurisdiction to Judge Warning's involvement in this case.
53
55

1 Additionally, Judge Stephen Warning was not listed under Superior Court Administrative Rule Six as a
3 Pro tempore judge, thus, Warning did not meet any of the legal and judicial thresholds to acquire authority
5 and jurisdiction of this case.

7
9 THEREFORE, the plaintiff now and again request by relief of and the vacancy to the judgment and
11 decision made by Judge Warning. Plaintiff also requests that this case be returned to Skamania County
13 from where it came for further proceedings.

15
17
19 **III. CONCLUSION:**

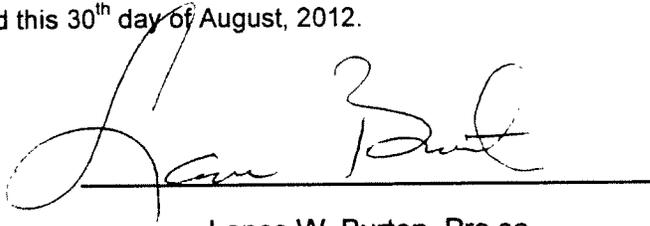
21
23 The Skamania County Clerk had a lawfully required duty to record, file or otherwise keep posted all
25 pertinent information in the Burton/Harris case. The record indexes show there was no such evidentiary
27 recordings made/filed to demonstrate that a majority of the Supreme Court Justice's had appointed Judge
29 Warning the lawful and necessary Authority and Jurisdiction to hear, decide and issue rulings to the case.

31
33 The Clerks Court Record is also absent any written appointment by the Governor, or that Judge E.
35 Thompson Reynolds of Skamania County had requested Judge Warning to hear and decide the
37 Burton/Harris case either.

39
41 Lastly, Judge Warning's intrusion into this case disrupted the rules of law. Plaintiff argues that Judge
43 Lodge had a Constitutional right to hear this case, WITHOUT WRITTEN APPROVAL. Or, in the event
45 Judge Lodge should not do so, the two remaining pro temp judge's seemingly have eligibility too.

47
49 The Plaintiff declares that the statements made herein are true to the best of his knowledge. He also
51 requests relief by the vacancy of all orders and decisions and the reversal of the judgment and the return
53 of this case to Skamania County.

1 Respectfully submitted this 30th day of August, 2012.

3
5
7 

9 Lance W. Burton, Pro se

11 13819 SE 19th Street

13 Vancouver, WA 98683

15 360-513-0251

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STATE OF WASHINGTON } ss.
COUNTY OF CLARK

On this day personally appeared before me Lance W. Burton, to me known to be the individual described in and who executed the within and foregoing instrument (affidavit, CR 60(b)) and acknowledges that they have signed this as their free and voluntary act and for the uses and purposes therein mentioned.

Given under my hand this 30th day of August 2012.

Jennifer M. Boon
Notary Public, for the State of Washington



April 15, 2015
Expiration Date

Lance W. Burton
LANCE W. BURTON
13819 SE 19th Street
Vancouver, Washington 98683
360-513-0251

2

9. No records responsive to this question.

10. No records responsive to this question.

11. No records responsive to this question.

12. No records responsive to this question.

13. No records responsive to this question.

14. These are the employees of Skamania County Superior Court between 9/1/09 and 2/28/10, not including the elected Superior Court Judge, the Juvenile Department and also not including temporary employees performing the task of Bailiff for trials: **Lizbeth Hermansen**. The following are Deputy Clerks or "assistants" who worked for the Skamania County Clerk Sharon Vance between 9/1/09 and 2/28/10: **Olivia Munsch, Paula Diaz, Grace Cross, Patti Midland, Lindsey Harmening**.

15. No records responsive to this question.

✓ 16. No records responsive to this request. The three elected pro-tem judges that were assigned cases in Skamania County Superior Court as of 2/1/09 were Judge Brian Altman, Judge Robert Weisfield, and Judge Ron Reynier.

Second Letter:

1. No records responsive to this question.

2. No records responsive to this question. The only documents responsive to this request would be an order of the Superior Court Judge that transferred the case, Judge Warning. This order would have been filed in Superior Court case number 09-2-00161-0. A copy of this order can be requested from the Cowlitz County Clerk's Office, who currently holds the court file on this case. This case may have a different cause number in Cowlitz County.

Third Letter:

1. No records responsive to this question.

2. No records responsive to this question.

Please call me at 509-427-3790 if you have any questions.

Sincerely,



Adam N. Kick
Skamania County Prosecuting Attorney

January 4, 2010

The Washington State Supreme Court
The Honorable Chief Justice, Mr. Gerry Alexander
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Sent Certified Mail:
7007 - 0710 - 0001 - 1625 - 5570

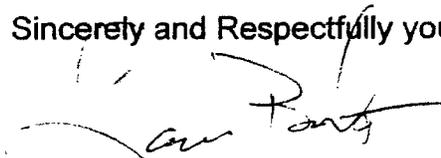
Dear Justice Alexander,

The attached letter, an official request, was sent to the Superior Court Clerk of Skamania County by Certified Mail on December 3, 2009.

As of this date, no written response has been acknowledged to my request made therein. However, the Court Clerk and the defense counsel for Clark County are urging my submission to Cowlitz County as the new venue location. But for the reasons mentioned herein I feel will not resolve the issues at hand.

I am sending this letter of notification to you and this Court in hopes of obtaining a direction of action to unwind this legal dilemma. Thank you for your prompt response.

Sincerely and Respectfully yours,

A handwritten signature in black ink, appearing to read "Lance W. Burton", written over a faint circular stamp or watermark.

Lance W. Burton
13819 SE 19th Street
Vancouver, WA 98683
360-513-0251

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Your request and my authorization (which is required) to move this matter to Cowlitz County and to Judge Warning is currently being denied.

As you are aware, the Constitution of the State of Washington holds a superior status over the Revised Code of Washington as well as state and local Civil Rules.

I am suggesting that under this state's constitution, specifically Art. IV § 7, a lawful measure has been established that would allow the Honorable Superior Court Judge (retired) Thomas Lodge to be requested to hear and decide this matter. I urge you and those so empowered to seek his assistance.

Upon certified acknowledgment of Judge Lodge's position, I may reconsider a change of direction/venue.

Of course, alternate settlement means are still available.

Respectfully submitted this 21, day of January, 2010



Lance W. Burton, Pro Se



PROSECUTING ATTORNEY

ADAM N. KICK, PROSECUTOR

January 11, 2012

LANCE BURTON
13819 SE 19th Street
Vancouver, WA 98683

Re: Your public records request received on 01/04/12

Dear Mr. Burton,

We received your letter dated 12/29/11 on 01/04/12. I contacted both Ms. Vance and Ms. Hermansen regarding your request for documents. Ms. Vance informed me that she has no documents that are not part of the official court file. Ms. Hermansen informed me that she has no written or email correspondence concerning instructions, advice, or opinions, by Judge Reynolds or his law clerk that were sent to judge Warning of Cowlitz County or to the defense attorney in your case, aside from any documents that were previously disclosed pursuant to your earlier requests. Let me know if you'd like us to send you another copy of any of the email correspondence or documents previously provided to you.

Please call me at 509-427-3790 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam N. Kick". The signature is fluid and cursive, with a large, stylized initial "A" and "K".

Adam N. Kick
Skamania County Prosecuting Attorney

11-11-11

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
13	10/16/2009	MT	NOTION FOR SUMMARY JUDGMENT	
14	10/16/2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
15	10/16/2009	REC	RECUSAL OF JUDGE (BRIAN ALTMAN)	
16	10/19/2009	CRML	CERTIFICATE OF MAILING	
17	10/19/2009	INRP	PLA 1ST INT & RQT FOR PROD TO DEF	
18	10/19/2009	RQAD	PLA'S SECOND REQ FOR ADMISS TO DEF	
19	10/19/2009	TSPR	CD TRANSCRIPT CLARK CO CASE# 03-2-04903-8	
20	10/19/2009	TSPR	CD TRANSCRIPT CLARK CO CASE# 03-2-04903-8	
21	12/16/2009	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
22	12/16/2009	CRML	CERTIFICATE OF MAILING	
23	01/22/2010	MT	MT/CERT FOR CHANGE OF VENUE ORDER	
24	01/22/2010	CIT	CITATION	01-27-2010S
		ACTION	9:15AM- MOTION FOR CHANGE OF VENUE	
		ACTION	** JUDGE STEPHEN WARNING TELEPHONIC	
25	01/22/2010	AFSR	PROOF OF SERVICE	
26	01/27/2010	MTHRG	MOTION HEARING	
27	01/28/2010	ORCHV	ORDER FOR CHANGE OF VENUE	
-	02/03/2010	NOTE	**FILED IN COWLITZ COUNTY** 10-2-00211-2	

=====END=====

APPENDIX 4

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ENDORSED FILED
SUPERIOR COURT

DEC 26 2012

COWLITZ COUNTY
BEVERLY R LITTLE, Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

LANCE W. BURTON,

Plaintiff,

v.

HONORABLE SUPERIOR COURT JUDGE
ROBERT L. HARRIS, AND ROBERT L.
HARRIS AND MARY JO HARRIS, as
husband and wife,

Defendants,

and

THE BOARD OF CLARK COUNTY
COMMISSIONERS (BETTY SUE MORRIS,
MARC BOLDT and STEVE STUART) FOR
AND ON THE BEHALF OF CLARK
COUNTY,

Defendants.

No. 10-2-00211-2

MEMORANDUM IN OPPOSITION TO
MOTION FOR RELIEF UNDER CR 60(b)

I. INTRODUCTION

This suit has been pursued in both the Superior Court and the Court of Appeals for Division II. Plaintiff even sought review before the Supreme Court. A mandate finalizing the action issued earlier this year. (*See Exhibit "A".*)

1 Plaintiff now seeks to avoid the claim preclusive effect of the mandate through
2 extraordinary motion. Specifically, Plaintiff alleges error under CR 60(b). Even a cursory
3 review of the Motion and supporting documents demonstrate that Plaintiff is simply rearguing
4 the claims that were rejected and/or abandoned on appeal previously.
5

6 Defendants assert that this motion is frivolous and subject to sanctions under CR 11, as
7 will be discussed below.

8 II. ARGUMENT AND AUTHORITIES

9 A. Lack of Personal Knowledge.

10 Plaintiff contends, either as fact or argument unsupported by evidence, that Skamania
11 County officials were coerced or acted improperly. In *Allen v. Asbestos Corp.*, 138 Wash.App.
12 564, 569-579, 157 P.3d 406 (2007), the court approved a trial court's rejection of unsupported
13 facts. *See also, e.g., CR 56(e)*. Plaintiff's claims at page 2 are totally unsupported and must be
14 rejected and stricken.
15

16 B. Failure to Satisfy the Prerequisites of CR 60(b).

17 CR 60(b)(1).

18 As the moving party, Plaintiff bears the burden of proving a mistake¹ of such significance
19 that the trial court in possession of that fact would have been compelled to take a different action.
20 Plaintiff has not identified a mistake in the proceedings, certainly not one justifying CR 60(b)
21 relief. Instead, Plaintiff has merely reargued its case; arguments rejected by the trial court and
22 either not argued or were rejected by the Court of Appeals.
23
24

25
26 //////////////

27
28 ¹ *Topliff v. Chicago Ins. Co.*, 130 Wn. App. 301, 308, 122 P.3d 922 (2005).

1 Given that this is the same case and cause number, arguments that were raised earlier are
2 resolved under the "Law of the Case" doctrine. The law of the case doctrine stands for the
3 proposition that once there is an appellate holding enunciating a principle of law, that holding
4 will be followed in subsequent stages of the same litigation. *Roberson v. Perez*, 156 Wn.2d 33,
5 41, 123 P.3d 844 (2005).

7 CR 60(b)(3). New Evidence.

8 The rule authorizes a court to vacate a judgment on the basis of "[n]ewly discovered
9 evidence which by due diligence could not have been discovered in time to move for a new trial
10 under rule 59(b)." A court will not grant vacation under this rule unless the newly discovered
11 evidence is material. *Vance v. Offices of Thurston County Comm'rs*, 117 Wn. App. 660, 671, 71
12 P.3d 680 (2003). Moreover, a court must reject a motion unless the moving party can demon-
13 strate the inability to timely discover the evidence through the exercise of due diligence. *Id.*

14 In this case, it is unclear what relevance a response to a public record disclosure request
15 has to the selection of judges. Plaintiff must demonstrate the legal significance of its evidence.
16 The exhibit attached to Plaintiff's motion only shows that Skamania did not have a document
17 responsive to Mr. Burton's request. It does provide the necessary link to support a motion for
18 relief from judgment.

19 It is important to note again that Plaintiff has previously argued this claim that the
20 transfer of the case to Cowlitz County was error. That claim was rejected by the Court of
21 Appeals in Cause 41521-6-II following transfer by the Supreme Court.

22 C. Frivolous Motion.

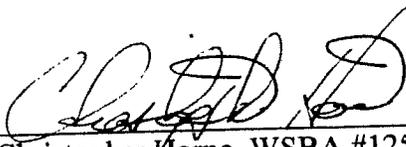
23 This motion does not present an arguable basis for relief from judgment. Plaintiff merely
24 reargues its prior case. This court should award attorney fees as a sanction for Plaintiff's action.

1 An appeal or motion is frivolous if there are "no debatable issues upon which reasonable minds
2 might differ, and it is so totally devoid of merit that there was no reasonable possibility" of
3 success. *Miller Cas. Ins. V. Briggs*, 100 Wn.2d 9, 15, 665 P.2d 887 (1983).
4

5 III. CONCLUSION

6 Clark County Defendants request this court reject Plaintiff's attempt at a "second bite at
7 the apple" and provide finality to the decision of the trial court whose decision was affirmed on
8 appeal.
9

10 Respectfully submitted this 26th day of December, 2012.

11
12 
13 Christopher Horne, WSBA #12557
14 Deputy Prosecuting Attorney
15 Of Attorneys for Defendant Clark County
16
17

18 CERTIFICATE OF SERVICE

19 On this 26th day of December, 2012, I, Thelma Kremer, hereby certify that I emailed and
20 mailed by U.S. mail, postage prepaid, a true and correct copy of the foregoing Memorandum in
21 Opposition to Motion for Relief Under CR 60(b) to the following:

22 Lance Burton
23 13819 SE 19th Street
24 Vancouver WA 98683
25 Email: fordtblb@yahoo.com

26 DATED this 26th day of December, 2012.

27
28 
29

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LANCE W. BURTON,
Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE
ROBERT L. HARRIS and MARY JO
HARRIS, husband and wife, and their marital
community; BOARD OF CLARK COUNTY
COMMISSIONERS (BETTY SUE MORRIS,
MARC BOLDT and STEVE STUART), for
and on behalf of CLARK COUNTY,
Respondenta.

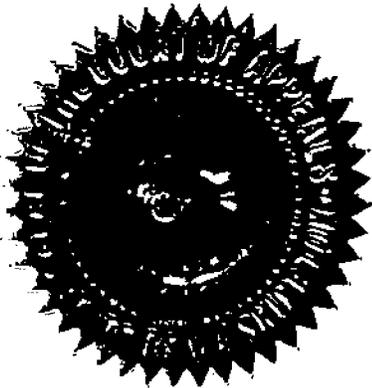
No. 41521-6-II

MANDATE

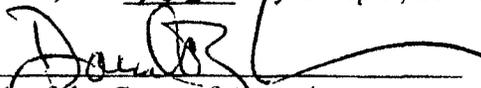
Cowlitz County Cause No.
10-2-00211-2

The State of Washington to: The Superior Court of the State of Washington
in and for Cowlitz County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on September 20, 2011 became the decision terminating review of this court of the above entitled case on March 7, 2012. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 10th day of April, 2012.


Clerk of the Court of Appeals,
State of Washington, Div. II

CLARK COUNTY PROSECUTOR

June 14, 2013 - 3:12 PM

Transmittal Letter

Document Uploaded: 441209-Motion on the Merits.pdf

Case Name: Lance Burton v. Judge Robert Harris, et. al.

Court of Appeals Case Number: 44120-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: Motion on the Merits

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Thelma W Kremer - Email: thelma.kremer@clark.wa.gov

NO. 44120-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

LANCE BURTON,

Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE (Ret.) ROBERT L. HARRIS
and MARY JO HARRIS, et. al.,

Respondents.

CERTIFICATE OF SERVICE

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

CHRISTOPHER HORNE, WSBA #12557
Senior Deputy Prosecuting Attorney
Of Attorneys for Respondents

Clark County Prosecutor's Office
Civil Division
PO Box 5000
Vancouver, WA 98666-5000
Telephone: (360) 397-2478
Facsimile: (360) 397-2184

CERTIFICATE OF SERVICE

I, Thelma Kremer, hereby certify and state the following:

I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein.

On this 14th day of June, 2013, I electronically filed the following:

1. Brief of Respondents;
2. Motion on the Merits; and
3. Certificate of Service;

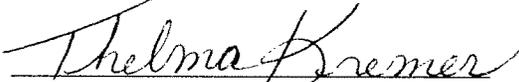
with the Court of Appeals of the State of Washington, Division II, by email using the following address: coa2filings@courts.wa.gov

On this 14th day of June, 2013, true and correct copies of these documents were served on the following party as follows:

Lance W. Burton
13819 SE 19th Street
Vancouver WA 98683

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Federal Express
<input type="checkbox"/>	Hand Delivered

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Thelma Kremer

NO. 44120-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

LANCE BURTON,

Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE (Ret.) ROBERT L. HARRIS
and MARY JO HARRIS, et. al.,

Respondents.

CERTIFICATE OF SERVICE

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

CHRISTOPHER HORNE, WSBA #12557
Senior Deputy Prosecuting Attorney
Of Attorneys for Respondents

Clark County Prosecutor's Office
Civil Division
PO Box 5000
Vancouver, WA 98666-5000
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Facsimile: (360) 397-2184

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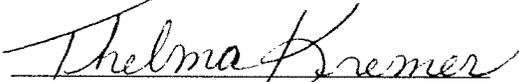
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<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Federal Express
<input type="checkbox"/>	Hand Delivered

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Thelma Kremer